

1-1 By: Williams S.B. No. 1286
1-2 (In the Senate - Filed March 7, 2013; March 13, 2013, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 2, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 2, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

1-8	Yea	Nay	Absent	PNV
1-9	Carona	X		
1-10	Taylor	X		
1-11	Eltife	X		
1-12	Estes	X		
1-13	Hancock	X		
1-14	Lucio	X		
1-15	Van de Putte	X		
1-16	Watson	X		
1-17	Whitmire	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1286 By: Taylor

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the regulation of professional employer services;
1-22 authorizing fees.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The heading to Chapter 91, Labor Code, is amended
1-25 to read as follows:

1-26 CHAPTER 91. PROFESSIONAL EMPLOYER ORGANIZATIONS [~~STAFF LEASING~~
1-27 ~~SERVICES~~]

1-28 SECTION 2. Section 91.001, Labor Code, is amended by
1-29 amending Subdivisions (1), (2-a), (3), (7), (11), (14), (15), (16),
1-30 and (17) and adding Subdivisions (3-a), (3-b), and (7-a) to read as
1-31 follows:

1-32 (1) "Applicant" means a person [~~business entity~~]
1-33 applying for a license or the renewal of a license under this
1-34 chapter.

1-35 (2-a) "Assurance organization" means an independent
1-36 entity approved by the commission that:

1-37 (A) provides a national program of accreditation
1-38 and financial assurance for professional employer organizations
1-39 [~~staff leasing services companies~~];

1-40 (B) has documented qualifications, standards,
1-41 and procedures acceptable to the department; and

1-42 (C) agrees to provide information, compliance
1-43 monitoring services, and financial assurance useful to the
1-44 department in accomplishing the provisions of this chapter.

1-45 (3) "Client [~~company~~]" means any [a] person who enters
1-46 into a professional employer services agreement [that contracts]
1-47 with a license holder [and is assigned employees by the license
1-48 holder under that contract].

1-49 (3-a) "Coemployer" means a professional employer
1-50 organization or a client that is a party to a coemployment
1-51 relationship.

1-52 (3-b) "Coemployment relationship" means a contractual
1-53 relationship between a client and a professional employer
1-54 organization that involves the sharing of employment
1-55 responsibilities with or allocation of employment responsibilities
1-56 to covered employees in accordance with the professional employer
1-57 services agreement and this chapter.

1-58 (7) "Controlling person" means an individual who:

1-59 (A) possesses direct or indirect control of 25
1-60 percent or more of the voting securities of a business entity

[~~corporation~~] that offers or proposes to offer professional employer [~~staff leasing~~] services;

(B) possesses the authority to set policy and direct management of a business entity [~~company~~] that offers or proposes to offer professional employer [~~staff leasing~~] services;

(C) is employed, appointed, or authorized by a business entity [~~company~~] that offers or proposes to offer professional employer [~~staff leasing~~] services to enter into a professional employer services agreement [~~contract~~] with a client [~~company~~] on behalf of the business entity [~~company~~]; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer professional employer [~~staff leasing~~] services.

(7-a) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client.

(11) "License holder" means a person licensed under this chapter to provide professional employer [~~staff leasing~~] services.

(14) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. [~~"Staff leasing services" means an arrangement by which employees of a license holder are assigned to work at a client company and in which employment responsibilities are in fact shared by the license holder and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the license holder. The term includes professional employer organization services.~~] The term does not include:

(A) temporary help;
 (B) an independent contractor;
 (C) the provision of services that otherwise meet the definition of "professional employer [~~staff leasing~~] services" by one person solely to other persons who are related to the service provider by common ownership; or
 (D) a temporary common worker employer as defined by Chapter 92.

(15) "Professional employer organization" [~~"Staff leasing services company"~~] means a business entity that offers professional employer [~~staff leasing~~] services. [~~The term includes a professional employer organization.~~]

(16) "Temporary help" means an arrangement by which an organization hires its own employees and assigns them to a company [~~client~~] to support or supplement the company's [~~client's~~] work force in a special work situation, including:

(A) an employee absence;
 (B) a temporary skill shortage;
 (C) a seasonal workload; or
 (D) a special assignment or project.

(17) "Wages" means:
 (A) compensation for labor or services rendered by a covered [~~an assigned~~] employee, whether computed on a time, task, piece, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, severance pay, bonuses, commissions, stock option grants, or deferred compensation owed to a covered [~~an assigned~~] employee under a written agreement.

SECTION 3. Subchapter A, Chapter 91, Labor Code, is amended by adding Sections 91.0011 and 91.0012 to read as follows:

Sec. 91.0011. COEMPLOYMENT RELATIONSHIP. (a) A coemployment relationship is intended to be an ongoing relationship, rather than a temporary or specific one, in which the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between coemployers under a professional employer services agreement. Coemployment is not a

joint employment arrangement.

(b) In a coemployment relationship:

(1) the professional employer organization may enforce only those employer rights and is subject to only those obligations specifically allocated to the professional employer organization by the professional employer services agreement or this chapter;

(2) the client may enforce any right and is obligated to perform those employer obligations allocated to the client by the professional employer services agreement or this chapter; and

(3) the client may enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer services agreement or this chapter.

Sec. 91.0012. COVERED EMPLOYEE. (a) A covered employee must meet all the following criteria:

(1) the individual must receive written notice of the coemployment relationship with the professional employer organization; and

(2) the individual's coemployment relationship must be under a professional employer services agreement subject to this chapter.

(b) An individual who is an executive employee, as described by Section 406.097, of the client is a covered employee, except to the extent the professional employer organization and the client expressly agree in the professional employer services agreement that the individual is not a covered employee, if the individual meets the criteria of this section and acts as an operational manager or performs day-to-day operational services for the client.

SECTION 4. Subsections (b) and (c), Section 91.002, Labor Code, are amended to read as follows:

(b) Each person who offers professional employer [~~staff leasing~~] services is subject to this chapter and the rules adopted by the commission.

(c) Notwithstanding any other provision of this chapter, nothing in this chapter preempts the existing statutory or rulemaking authority of any other state agency or entity to regulate professional employer [~~staff leasing~~] services in a manner consistent with the statutory authority of that state agency or entity.

SECTION 5. Subsection (a), Section 91.003, Labor Code, is amended to read as follows:

(a) Each state agency that in performing duties under other law affects the regulation of professional employer [~~staff leasing~~] services shall cooperate with the department and other state agencies as necessary to implement and enforce this chapter.

SECTION 6. Sections 91.004, 91.005, 91.006, 91.007, 91.011, and 91.012, Labor Code, are amended to read as follows:

Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES.

(a) This chapter does not exempt a client of a license holder, or any covered [~~assigned~~] employee, from any other license requirements imposed under local, state, or federal law.

(b) A covered [~~An~~] employee who is licensed, registered, or certified under law [~~and who is assigned to a client company~~] is considered to be an employee of the client [~~company~~] for the purpose of that license, registration, or certification.

(c) A license holder is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer services [~~staff leasing~~] agreement with a client [~~company~~] and covered [~~assigned~~] employees.

Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client's [~~client company's~~] status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client [~~company~~] has entered into a professional employer services [~~an~~] agreement with a license holder or uses the services

4-1 of a license holder.

4-2 Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A
4-3 certificate of insurance coverage or other evidence of coverage
4-4 showing that either a license holder or a client maintains ~~a policy~~
4-5 ~~of~~ workers' compensation insurance coverage constitutes proof of
4-6 workers' compensation insurance coverage for the license holder and
4-7 the client ~~[company]~~ with respect to all covered employees of the
4-8 license holder and ~~[assigned to]~~ the client ~~[company]~~. The state
4-9 and a political subdivision of the state shall accept a certificate
4-10 of insurance coverage or other evidence of coverage described by
4-11 this section as proof of workers' compensation coverage under
4-12 Chapter 406.

4-13 (b) For a client ~~[company]~~ that has employees who are not
4-14 covered ~~[assigned]~~ employees under a professional employer ~~[staff~~
4-15 ~~leasing]~~ services agreement, the state or a political subdivision
4-16 of the state may require the client ~~[company]~~ to furnish separate
4-17 proof of workers' compensation insurance coverage for those
4-18 employees.

4-19 Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS. This
4-20 chapter does not relieve a client ~~[company]~~ of a right, obligation,
4-21 or duty under:

4-22 (1) Chapter 101;

4-23 (2) the federal National Labor Relations Act (29
4-24 U.S.C. Section 151 et seq.);

4-25 (3) the federal Railway Labor Act (45 U.S.C. Section
4-26 151 et seq.); or

4-27 (4) any other law governing labor relations.

4-28 Sec. 91.011. LICENSE REQUIRED. A person may not engage in
4-29 or offer professional employer ~~[staff-leasing]~~ services in this
4-30 state unless the person holds a license issued under this chapter.

4-31 Sec. 91.012. GENERAL LICENSE REQUIREMENTS. To be qualified
4-32 to serve as a controlling person of a license holder under this
4-33 chapter, that person must be at least 18 years of age and have
4-34 educational, managerial, or business experience relevant to:

4-35 (1) operation of a business entity offering
4-36 professional employer ~~[staff-leasing]~~ services; or

4-37 (2) service as a controlling person of a professional
4-38 employer organization ~~[staff-leasing services company]~~.

4-39 SECTION 7. Subsections (a) and (c), Section 91.014, Labor
4-40 Code, are amended to read as follows:

4-41 (a) An applicant for an original or renewal license must
4-42 demonstrate positive working capital in the following amounts:

4-43 (1) \$50,000 if the applicant employs fewer than 250
4-44 covered ~~[assigned]~~ employees;

4-45 (2) \$75,000 if the applicant employs at least 250 but
4-46 not more than 750 covered ~~[assigned]~~ employees; and

4-47 (3) \$100,000 if the applicant employs more than 750
4-48 covered ~~[assigned]~~ employees.

4-49 (c) Information submitted to or maintained by the
4-50 department is subject to Chapter 552, Government Code, other than
4-51 information related to:

4-52 (1) identification of clients ~~[client companies]~~;

4-53 (2) working capital;

4-54 (3) financial statements; or

4-55 (4) federal tax returns.

4-56 SECTION 8. Subsection (a), Section 91.015, Labor Code, is
4-57 amended to read as follows:

4-58 (a) To receive a professional employer organization ~~[staff~~
4-59 ~~leasing services company]~~ original license, a person shall file
4-60 with the department a written application accompanied by the
4-61 application fee.

4-62 SECTION 9. Subsection (a), Section 91.017, Labor Code, is
4-63 amended to read as follows:

4-64 (a) Each applicant for an original or renewal professional
4-65 employer organization ~~[staff-leasing services company]~~ license
4-66 shall pay to the department before the issuance of the license or
4-67 license renewal a fee set by the commission by rule.

4-68 SECTION 10. Subsection (e) and (f), Section 91.018, Labor
4-69 Code, are amended to read as follows:

(e) A license holder offering professional employer ~~[staff leasing]~~ services in more than one state may advertise in this state using the name of its parent company or under a trade name, trademark, or service mark. The trade name, trademark, service mark, or parent company name must be listed on the license in addition to the licensed name used by the license holder in this state.

(f) Each written proposal provided to a prospective client ~~[company]~~ and each contract between a license holder and a client ~~[company]~~ or covered ~~[assigned]~~ employee shall clearly identify the name of the license holder. A proposal or contract may also identify the trade name, trademark, service mark, or parent company name of the license holder. A license holder may use written materials including forms, benefit information, letterhead, and business cards that bear only the trade name, trademark, service mark, or parent company name of the license holder.

SECTION 11. Subsections (a), (b), and (c), Section 91.019, Labor Code, are amended to read as follows:

(a) The commission by rule shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer ~~[staff leasing]~~ services in this state.

(b) For purposes of this section, a professional employer organization ~~[staff leasing services company]~~ is considered to be offering limited professional employer ~~[staff leasing]~~ services if the professional employer organization ~~[staff leasing services company]~~:

(1) employs fewer than 50 covered ~~[assigned]~~ employees in this state at any one time;

(2) does not provide covered ~~[assigned]~~ employees to a client ~~[company]~~ based or domiciled in this state; and

(3) does not maintain an office in this state or solicit clients ~~[client companies]~~ located or domiciled in this state.

(c) A professional employer organization ~~[staff leasing services company]~~ that offers limited professional employer ~~[staff leasing]~~ services shall complete the application forms and pay the fees for a limited license as prescribed by the department. A limited license is valid for one year from the date of issuance and may be renewed annually on submission of a renewal application and payment of the required fees.

SECTION 12. Section 91.020, Labor Code, is amended to read as follows:

Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The department may take disciplinary action against a license holder on any of the following grounds:

(1) engaging in professional employer ~~[staff leasing]~~ services or offering to engage in the provision of professional employer ~~[staff leasing]~~ services without a license;

(2) transferring or attempting to transfer a license issued under this chapter;

(3) violating this chapter or any order or rule issued by the executive director or commission under this chapter;

(4) failing after the 31st day after the date on which a felony conviction of a controlling person is final to notify the department in writing of the conviction;

(5) failing to cooperate with an investigation, examination, or audit of the license holder's records conducted by the license holder's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by law by the Texas Department of Insurance;

(6) failing after the 31st day after the effective date of a change in ownership, principal business address, or the address of accounts and records to notify the department and the Texas Department of Insurance of the change;

(7) failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the executive director;

(8) refusing, after reasonable notice, to meet reasonable health and safety requirements within the license

holder's control and made known to the license holder by a federal or state agency;

(9) being delinquent in the payment of the license holder's insurance premiums other than those subject to a legitimate dispute;

(10) being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;

(11) knowingly making a material misrepresentation to an insurance company or to the department or other governmental agency;

(12) failing to maintain the working capital required under Section 91.014; or

(13) using professional employer [~~staff leasing~~] services to avert or avoid an existing collective bargaining agreement.

SECTION 13. Subsection (b), Section 91.021, Labor Code, is amended to read as follows:

(b) A professional employer organization [~~staff leasing services company~~] may authorize an assurance organization that is qualified and approved by the commission to act on its behalf in complying with the licensing requirements of this chapter, including the electronic filing of information and the payment of application and licensing fees. Use of an assurance organization is optional and is not mandatory for a professional employer organization [~~staff leasing services company~~].

SECTION 14. Subchapter C, Chapter 91, Labor Code, is amended to read as follows:

SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES [~~STAFF LEASING SERVICES~~] AGREEMENT

Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder shall establish the terms of a professional employer [~~staff leasing~~] services agreement by a written contract between the license holder and the client [~~company~~].

(b) The license holder shall give written notice of the agreement as it affects covered [~~assigned~~] employees to each covered employee [~~assigned to a client company worksite~~].

(c) The written notice required by Subsection (b) must be given to each covered [~~assigned~~] employee not later than the first payday after the date on which that individual becomes a covered [~~an assigned~~] employee.

Sec. 91.032. CONTRACT REQUIREMENTS. (a) A professional employer services agreement [~~contract~~] between a license holder and a client [~~company~~] must provide that the license holder:

(1) shares, as provided by Subsection (b), with the client [~~company~~] the right of direction and control over covered employees [~~assigned to a client's worksites~~];

(2) assumes responsibility for the payment of wages to the covered [~~assigned~~] employees without regard to payments by the client to the license holder;

(3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on covered [~~assigned~~] employees;

(4) shares, as provided by Subsection (b), with the client [~~company~~] the right to hire, fire, discipline, and reassign the covered [~~assigned~~] employees; and

(5) shares, as provided by Subsection (b), with the client [~~company~~] the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures.

(b) Notwithstanding any other provision of this chapter, a client [~~company~~] retains sole responsibility for:

(1) the direction and control of covered [~~assigned~~] employees as necessary to conduct the client's [~~client company's~~] business, discharge any applicable fiduciary duty, or comply with any licensure, regulatory, or statutory requirement;

(2) goods and services produced by the client [~~company~~]; and

(3) the acts, errors, and omissions of covered ~~[assigned]~~ employees committed within the scope of the client's ~~[client company's]~~ business.

(c) Notwithstanding Subsection (a)(2), a client ~~[company]~~ is solely obligated to pay any wages for which:

(1) obligation to pay is created by an agreement, contract, plan, or policy between the client ~~[company]~~ and the covered ~~[assigned]~~ employee; and

(2) the professional employer organization ~~[staff leasing services company]~~ has not contracted to pay.

(d) Each professional employer organization ~~[staff leasing services company]~~ shall disclose the requirements of Subsection (c) in writing to each covered ~~[assigned]~~ employee.

SECTION 15. Section 91.041, Labor Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A client and license holder are each considered an employer under the laws of this state for purposes of sponsoring retirement and welfare benefit plans for covered employees. [A license holder may sponsor and maintain employee benefit plans for the benefit of assigned employees. A client company may include assigned employees in any benefit plan sponsored by the client company.]

(a-1) A license holder may sponsor a single welfare benefit plan under which eligible covered employees of one or more clients may elect to participate.

(a-2) A fully insured welfare benefit plan offered to the covered employees of a license holder and provided by an insurance company authorized to provide that insurance in this state or a self-funded health benefit plan sponsored by a license holder as provided by Section 91.0411 shall be treated for purposes of state law as a single employer welfare benefit plan.

(b) With respect to any insurance or benefit plan provided by a license holder for the benefit of its assigned employees, a license holder shall disclose the following information to the department, each client ~~[company]~~, and its covered ~~[assigned]~~ employees:

- (1) the type of coverage;
- (2) the identity of each insurer for each type of coverage;
- (3) the amount of benefits provided for each type of coverage and to whom or in whose behalf benefits are to be paid;
- (4) the policy limits on each insurance policy; and
- (5) whether the coverage is fully insured, partially insured, or fully self-funded.

SECTION 16. Subchapter D, Chapter 91, Labor Code, is amended by adding Section 91.0411 to read as follows:

Sec. 91.0411. SELF-FUNDED HEALTH BENEFIT.
(a) Notwithstanding Section 91.001, in this section, "department" means the Texas Department of Insurance.

(b) A license holder may sponsor benefits that are not fully insured if the license holder meets the requirements of Subsection (c) and is approved by the department.

(c) The department may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement the regulation of benefit plans sponsored by a license holder that are not fully insured. The department may not adopt a rule that requires clients or covered employees to be members of an association or group in the same trade or industry. The rules must include all requirements that must be met by the license holder and the plan, including:

- (1) initial and final approval requirements;
- (2) authority to prescribe forms and items to be submitted to the department by the license holder;
- (3) a fidelity bond;
- (4) use of an independent actuary;
- (5) use of a third-party administrator;
- (6) authority for the department to examine an application or a plan;

(7) the minimum number of clients and covered employees covered by the plan;

(8) standards for those natural persons managing the plan;

(9) the minimum amount of gross contributions;

(10) the minimum amount of written commitment, binder, or policy for stop-loss insurance;

(11) the minimum amount of reserves; and

(12) a fee in an amount reasonable and necessary to defray the costs of administering this section to be deposited to the credit of the department's operating fund.

(d) Information submitted under this section is confidential and not subject to public inspection.

(e) Each license holder under this section shall appoint the commissioner of the department as its resident agent for purposes of service of process. The fee for that service is \$50, payable at the time of appointment.

(f) The department may examine the affairs of any plan and shall have access to the records of the plan. The department may examine under oath a manager or employee of the license holder in connection with the plan.

(g) In addition to any requirement or remedy under a law, the department may suspend, revoke, or limit the certificate of authority of a plan if the department determines, after notice and hearing, that the plan does not comply with this section. The department may notify the attorney general of a violation of this section, and the attorney general may apply to a district court in Travis County for leave to file suit in the nature of quo warranto or for injunctive relief or both.

(h) A plan under this section is subject to Chapters 404, 441, and 443, Insurance Code.

SECTION 17. Section 91.042, Labor Code, is amended by amending Subsections (a) through (h) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A license holder or client may elect to obtain workers' compensation insurance coverage for covered ~~[the license holder's assigned]~~ employees through an insurance company as defined under Section 401.011(28) or through self-insurance as provided under Chapter 407.

(a-1) The client and the professional employer organization shall specify in the professional employer services agreement whether the parties have elected to obtain workers' compensation insurance coverage for the covered employees and shall specify which party must maintain coverage. A copy of the professional employer services agreement must be provided to the Texas Department of Insurance on request. Information obtained by the Texas Department of Insurance under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(a-2) If the client elects to maintain workers' compensation insurance coverage for the covered employees under the client's policy or other coverage, the client shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client.

(b) If a license holder maintains workers' compensation insurance coverage for covered employees, the license holder shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client ~~[company]~~ for the first two years the covered employees are covered under the professional employer organization's policy ~~[client company has a contract with the license holder]~~ and as further provided by rule by the Texas Department of Insurance.

(c) For workers' compensation insurance purposes, a license holder and the license holder's client ~~[company]~~ shall be coemployers. If either a license holder or a client elects to obtain workers' compensation insurance coverage for covered employees, the client ~~[company]~~ and the license holder are subject to Sections 406.005, 406.034, ~~[and]~~ 408.001, and 411.032.

(d) If a license holder or a client does not elect to obtain workers' compensation insurance coverage for covered employees,

both the license holder and the client ~~[company]~~ are subject to Sections 406.004, 406.005, ~~[and]~~ 406.033, and 411.032.

(e) After the expiration of the two-year period under Subsection (b), if the client elects to obtain ~~[company obtains a new]~~ workers' compensation insurance coverage for covered employees through coverage maintained by the client, or if the professional employer services agreement is terminated and the client elects to maintain, through coverage maintained by the client or through coverage maintained by a successor professional employer organization, workers' compensation insurance coverage for employees previously covered by the former professional employer organization's policy ~~[policy in the company's own name or adds the company's former assigned workers to an existing policy]~~, the premium for the workers' compensation insurance coverage for the client ~~[policy of the company]~~ shall be based on the lower of:

(1) the experience modifier of the client ~~[company]~~ before being covered under the professional employer organization's coverage ~~[entering into the staff leasing arrangement]~~; or

(2) the experience modifier of the license holder at the time the client's coverage under the professional employer organization's coverage is ~~[staff leasing arrangement]~~ terminated.

(f) On request, an insurer ~~[the Texas Department of Insurance]~~ shall provide the necessary computations to the prospective workers' compensation insurer of the client ~~[company]~~ to comply with Subsection (e).

(g) On the written request of a client ~~[company]~~, a license holder that elects to provide workers' compensation insurance for covered ~~[assigned]~~ employees shall provide to the client ~~[company]~~ a list of:

(1) claims associated with that client ~~[company]~~ made against the license holder's workers' compensation policy; and

(2) payments made and reserves established on each claim.

(h) The license holder shall provide the information described by Subsection (g) in writing from the license holder's own records, if the license holder is a qualified self-insurer, or from information the license holder received from the license holder's workers' compensation insurance provider following the license holder's request under Section 2051.151, Insurance Code, not later than the 60th day after the date the license holder receives the client's ~~[client company's]~~ written request. For purposes of this subsection, information is considered to be provided to the client ~~[company]~~ on the date the information is:

(1) received by the United States Postal Service; or

(2) personally delivered to the client ~~[company]~~.

SECTION 18. Sections 91.044, 91.046, 91.048, 91.050, 91.061, 92.012, and 201.030, Labor Code, are amended to read as follows:

Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL. (a) A license holder is the employer of a covered ~~[an assigned]~~ employee for purposes of Subtitle A, Title 4, and, except for wages subject to Section 91.032(c), for purposes of Chapter 61. In addition to any other reports required to be filed by law, a license holder shall report quarterly to the Texas Workforce Commission on a form prescribed by the Texas Workforce Commission the name, address, telephone number, federal income tax identification number, and classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget of each client ~~[company]~~.

(b) For purposes of Subtitle A, Title 4, in the event of the termination of a contract between a license holder and a client ~~[company]~~ or the failure by a professional employer organization ~~[staff leasing entity]~~ to submit reports or make tax payments as required by that subtitle, the contracting client ~~[company]~~ shall be treated as a new employer without a previous experience record unless that client ~~[company]~~ is otherwise eligible for an experience rating.

Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is

responsible for the license holder's contractual duties and responsibilities to manage, maintain, collect, and make timely payments for:

- (1) insurance premiums;
- (2) benefit and welfare plans;
- (3) other employee withholding; and
- (4) any other expressed responsibility within the scope of the professional employer services agreement ~~[contract]~~ for fulfilling the duties imposed under this section and Sections 91.032, 91.047, and 91.048.

Sec. 91.048. REQUIRED INFORMATION. Each license holder shall:

(1) maintain adequate books and records regarding the license holder's duties and responsibilities;

(2) maintain and make available at all times to the executive director the following information, which shall be treated as proprietary and confidential and is exempt from disclosure to persons other than other governmental agencies having a reasonable, legitimate purpose for obtaining the information:

(A) the correct name, address, and telephone number of each client ~~[company]~~;

(B) each professional employer services agreement with a client ~~[company contract]~~; and

(C) a listing by classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget, of each client ~~[company]~~;

(3) notify the department of any addition or deletion of a controlling person as listed on the license application or renewal form by providing the name of the person not later than the 45th day after the date on which the person is added or deleted as a controlling person; and

(4) provide a biographical history to the department in connection with the addition of a new controlling person.

Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For the purpose of determining tax credits, grants, and other economic incentives provided by this state or other governmental entities that are based on employment, covered ~~[assigned]~~ employees are considered employees of the client and the client is solely entitled to the benefit of any tax credit, economic incentive, or other benefit arising from the employment of covered ~~[assigned]~~ employees of the client. This subsection applies even if the professional employer organization ~~[staff-leasing services company]~~ is the reporting employer for federal income tax purposes.

(b) If a grant or the amount of any incentive described by Subsection (a) is based on the number of employees, each client shall be treated as employing only those ~~[assigned]~~ coemployed ~~[co-employed]~~ by the client. Covered ~~[Assigned]~~ employees working for other clients of the professional employer organization ~~[staff-leasing services company]~~ may not be included in the computation.

(c) Each professional employer organization ~~[staff-leasing services company]~~ shall provide, on the request of a client or an agency of this state, employment information reasonably required by the state agency responsible for the administration of any tax credit or economic incentive described by Subsection (a) and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

Sec. 91.061. PROHIBITED ACTS. A person may not:

(1) engage in or offer professional employer ~~[staff-leasing]~~ services without holding a license under this chapter as a professional employer organization ~~[staff-leasing services company]~~;

(2) use the name, ~~[or]~~ title, or designation "professional employer organization," "PEO," "staff leasing company," "employee leasing company," "licensed professional employer organization," "professional employer organization services company," "professional employer organization company," "licensed staff leasing company," "staff leasing services

11-1 ~~company," "professional employer organization,"~~ or
 11-2 "administrative employer" or otherwise represent that the entity is
 11-3 licensed under this chapter unless the entity holds a license
 11-4 issued under this chapter;

11-5 (3) represent as the person's own the license of
 11-6 another person or represent that a person is licensed if the person
 11-7 does not hold a license;

11-8 (4) give materially false or forged evidence to the
 11-9 department in connection with obtaining or renewing a license or in
 11-10 connection with disciplinary proceedings under this chapter; or

11-11 (5) use or attempt to use a license that has expired or
 11-12 been revoked.

11-13 Sec. 92.012. EXEMPTIONS FROM LICENSING REQUIREMENT. This
 11-14 chapter does not apply to:

11-15 (1) a temporary skilled labor agency;

11-16 (2) a professional employer organization [~~staff~~
 11-17 ~~leasing services company~~];

11-18 (3) an employment counselor;

11-19 (4) a talent agency;

11-20 (5) a labor union hiring hall;

11-21 (6) a temporary common worker employer that does not
 11-22 operate a labor hall;

11-23 (7) a labor bureau or employment office operated by a
 11-24 person for the sole purpose of employing an individual for the
 11-25 person's own use; or

11-26 (8) an employment service or labor training program
 11-27 provided by a governmental entity.

11-28 Sec. 201.030. PROFESSIONAL EMPLOYER ORGANIZATION [~~STAFF~~
 11-29 ~~LEASING SERVICES COMPANY~~]. For the purposes of this subtitle,
 11-30 "professional employer organization" [~~"staff leasing services~~
 11-31 ~~company"~~] has the meaning assigned by Section 91.001.

11-32 SECTION 19. Subsection (i), Section 207.045, Labor Code, is
 11-33 amended to read as follows:

11-34 (i) A covered [~~An assigned~~] employee of a professional
 11-35 employer organization [~~staff leasing services company~~] is
 11-36 considered to have left the covered [~~assigned~~] employee's last work
 11-37 without good cause if the professional employer organization [~~staff~~
 11-38 ~~leasing services company~~] demonstrates that:

11-39 (1) at the time the employee's assignment to a client
 11-40 [~~company~~] concluded, the professional employer organization [~~staff~~
 11-41 ~~leasing services company~~], or the client [~~company~~] acting on the
 11-42 professional employer organization's [~~staff leasing services~~
 11-43 ~~company's~~] behalf, gave written notice and written instructions to
 11-44 the covered [~~assigned~~] employee to contact the professional
 11-45 employer organization [~~staff leasing services company~~] for a new
 11-46 assignment; and

11-47 (2) the covered [~~assigned~~] employee did not contact
 11-48 the professional employer organization [~~staff leasing services~~
 11-49 ~~company~~] regarding reassignment or continued employment; provided
 11-50 that the covered [~~assigned~~] employee may show that good cause
 11-51 existed for the covered [~~assigned~~] employee's failure to contact
 11-52 the professional employer organization [~~staff leasing services~~
 11-53 ~~company~~].

11-54 SECTION 20. The heading to Section 415.011, Labor Code, is
 11-55 amended to read as follows:

11-56 Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION
 11-57 [~~STAFF LEASING SERVICES COMPANY~~] WORKERS' COMPENSATION CLAIM AND
 11-58 PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION.

11-59 SECTION 21. Section 415.011, Labor Code, is amended by
 11-60 amending Subsections (a) and (c) and adding Subsection (a-1) to
 11-61 read as follows:

11-62 (a) In this section, "license holder" has the meaning
 11-63 assigned by Section 91.001.

11-64 (a-1) Except as provided by Subsection (c), a [~~staff leasing~~
 11-65 ~~services company~~] license holder commits a violation if the license
 11-66 holder fails to provide the information required by Sections
 11-67 91.042(g) and (h).

11-68 (c) A [~~staff leasing services company~~] license holder does
 11-69 not commit an administrative violation under this section if the

license holder requested the information required by Sections 91.042(g) and (h) from the license holder's workers' compensation insurance provider and the provider does not provide the information to the license holder within the required time. A license holder shall notify the Texas Department of Insurance of a provider's failure to comply with the requirements of Section 2051.151, Insurance Code.

SECTION 22. Section 151.057, Tax Code, is amended to read as follows:

Sec. 151.057. SERVICES BY EMPLOYEES. The following services are not taxable under this chapter:

(1) a service performed by an employee for his employer in the regular course of business, within the scope of the employee's duties, and for which the employee is paid his regular wages or salary;

(2) a service performed by an employee of a temporary employment service as defined by Section 93.001, Labor Code, for an employer to supplement the employer's existing work force on a temporary basis, when the service is normally performed by the employer's own employees, the employer provides all supplies and equipment necessary, and the help is under the direct or general supervision of the employer to whom the help is furnished; or

(3) a service performed by covered ~~[assigned]~~ employees of a professional employer organization ~~[staff-leasing company]~~, either licensed under Chapter 91, Labor Code, or exempt from the licensing requirements of that chapter, for a client ~~[company]~~ under a written contract that provides for shared employment responsibilities between the professional employer organization ~~[staff-leasing company]~~ and the client ~~[company]~~ for the covered ~~[assigned]~~ employees, most of whom must have been previously employed by the client ~~[company]~~. The comptroller shall prescribe by rule the minimum percentage of covered ~~[assigned]~~ employees that must have been previously employed by the client ~~[company]~~, the minimum time period the covered ~~[assigned]~~ employees must have been employed by the client ~~[company]~~ prior to the commencement of its contract, and such other criteria as the comptroller may deem necessary to properly implement this section.

SECTION 23. Subdivision (15), Section 171.0001, Tax Code, is amended to read as follows:

(15) "Professional employer organization" ~~["Staff-leasing services company"]~~ means:

(A) a business entity that offers professional employer ~~[staff-leasing]~~ services, as that term is defined by Section 91.001, Labor Code; or

(B) a temporary employment service, as that term is defined by Section 93.001, Labor Code.

SECTION 24. Subsection (b), Section 171.101, Tax Code, is amended to read as follows:

(b) Notwithstanding Subsection (a)(1)(B)(ii), a professional employer organization ~~[staff-leasing services company]~~ may subtract only compensation as determined under Section 171.1013.

SECTION 25. Subsection (k), Section 171.1011, Tax Code, is amended to read as follows:

(k) A taxable entity that is a professional employer organization ~~[staff-leasing services company]~~ shall exclude from its total revenue payments received from a client ~~[company]~~ for wages, payroll taxes on those wages, employee benefits, and workers' compensation benefits for the covered ~~[assigned]~~ employees of the client ~~[company]~~.

SECTION 26. Subsections (d) and (e), Section 171.1013, Tax Code, are amended to read as follows:

(d) A taxable entity that is a professional employer organization ~~[staff-leasing services company]~~:

(1) may not include as wages or cash compensation payments described by Section 171.1011(k); and

(2) shall determine compensation as provided by this section only for the taxable entity's own employees that are not covered ~~[assigned]~~ employees.

(e) Subject to the other provisions of this section, in determining compensation, a taxable entity that is a client ~~[company]~~ that contracts with a professional employer organization ~~[staff leasing services company]~~ for covered ~~[assigned]~~ employees:

(1) shall include payments made to the professional employer organization ~~[staff leasing services company]~~ for wages and benefits for the covered ~~[assigned]~~ employees as if the covered ~~[assigned]~~ employees were actual employees of the entity;

(2) may not include an administrative fee charged by the professional employer organization ~~[staff leasing services company]~~ for the provision of the covered ~~[assigned]~~ employees; and

(3) may not include any other amount in relation to the covered ~~[assigned]~~ employees, including payroll taxes.

SECTION 27. Section 171.2125, Tax Code, is amended to read as follows:

Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN PROFESSIONAL EMPLOYER SERVICES ~~[STAFF LEASING]~~ ARRANGEMENTS. In calculating cost of goods sold or compensation, a taxable entity that is a client ~~[company]~~ of a professional employer organization ~~[staff leasing services company]~~ shall rely on information provided by the professional employer organization ~~[staff leasing services company]~~ on a form promulgated by the comptroller or an invoice.

SECTION 28. The following laws are repealed:

(1) Subdivision (2), Section 91.001, Labor Code; and

(2) Section 91.043, Labor Code.

SECTION 29. (a) Not later than January 1, 2014, the Texas Commission of Licensing and Regulation shall adopt any rules necessary to administer Chapter 91, Labor Code, as amended by this Act.

(b) The changes in law made by this Act apply only to a professional employer services agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement is entered into, and the former law is continued in effect for that purpose.

SECTION 30. This Act takes effect September 1, 2013.

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